## EMPLOYMENT OF EX-OFFENDERS POLICY

#### Policy Statement

Chichester District Council recognises that to appoint on merit and to comply with our Equalities policy we must consider candidates for employment from the broadest range possible, which includes ex-offenders. Chichester District Council is committed to the fair treatment of staff, potential staff or users of its services, regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex/gender, sexual orientation or offending background.

We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates for interview based on skills, qualifications and experience. This policy confirms the Council’s commitment to ensuring that ex-offenders are not subjected to unfair discrimination in recruitment or employment.

It is recognised that a significant minority of the working population will have been convicted of a criminal offence at some time. Obtaining a job is an essential part of successful rehabilitation. Failure to obtain paid employment is a major reason for re-offending.

The Council, where justified, will seek disclosure of criminal records for certain posts.

#### Scope

This policy relates to the recruitment and employment of all employees and will be brought to the attention of all managers and staff. It will also be available to potential applicants for council jobs via Chichester District Council’s website.

#### Legislation

Rehabilitation of Offenders Act 1974 (as amended in 2023) The Rehabilitation of Offenders Act 1974 was introduced to ensure that ex-offenders who have not re-offended for a period of time since the dates of their conviction are not discriminated against when applying for jobs. It is unlawful for employers, or prospective employers, to consider offences in relation to which the individual concerned is deemed to be rehabilitated. This means an individual who has had a conviction for an offence, may with certain exceptions, be allowed to treat the conviction as if it never occurred. Under the terms of this Act information on “spent” convictions can only be requested if the post is in an exempt category under the Act. If so, employers can ask for details of all spent convictions that are legally disclosable.

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2023) The amendments to the Exceptions Order provide that certain spent convictions and cautions are 'protected' and are not subject to spent items disclosure to employers and cannot be considered. Filtering is the term that the Disclosure & Barring Service uses to describe the process of identifying and removing protected convictions and cautions so that they do not appear on criminal record certificates.

Amendments were made to the 1974 Act via the **Police, Crime, Sentencing and Courts Act 2022.** The changes significantly reduce the length of time that someone needs to disclose their criminal record for custodial sentences of under 4 years and community sentences – see section 2.6 below.

Police Act 1997 makes provision for three different levels of criminal record checks.

Data Protection Act 1998

Protection of Children Act 1999 – The Act lays down certain requirements for any organisation that employs staff or engages volunteers who hold a child care position as defined by the Act. The majority of the Council’s activities involving children fall outside of the Act. However the Government expects organisations whose activities fall outside of the Act to provide a comparable level of safety to children under their supervision to that afforded within the regulated child care sector. The Council adheres to the child protection principles contained within the Act.

Criminal and Court Justice Act 2000 – persons having committed certain offences are disqualified from working with children.

Children Act 2004 - Section 11 of the Children Act 2004 places a duty on a range of public sector bodies to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children.

Equality Act 2010

Police, Crime, Sentencing and Courts Act 2022

#### Policy Standards

As part of the policy the Council will ensure that recruitment is made by objective assessments as follows:

* It will focus on the candidate’s abilities, skills, experience and qualifications.
* It will consider the nature of the conviction, if not spent, and its relevance

to the post in question. It will identify the risks to the Council’s business, customers and employees

* It will recognise that having a criminal record does not always mean a lack of skills, qualifications and experience. Note that high quality training, leading to qualifications, is available in prisons.

#### Recruitment Practice - Criminal Record Disclosures

1.1 As part of its recruitment practice the Council will seek disclosure of criminal records from the Disclosure & Barring Service (DBS) for potential employees who will be working with children or others at risk or will have access to sensitive personal information. These appointments are made subject to satisfactory criminal records clearance being received. A disclosure is only requested after a risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, job adverts and recruitment information will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.

1.2 We ensure that corporate HR staff involved in the decision making process are suitably trained to identify and assess the relevance and circumstances of disclosure information.

1.3 Subject to the spent convictions and filtering rules, job applicants must declare to the Council on job application forms if they have had any criminal convictions, cautions, reprimands or final warnings or if they are subject to current police criminal investigations or charges. Failure to do so could lead to future disciplinary proceedings including termination of employment.

1.4 Clearance by the DBS will be renewed every 3 years for Enhanced Disclosures and every 5 years for Standard and Basic Disclosures. Continuing employment with the Council will be subject to fresh clearance being received on each occasion.

1.5 The Council also reserve the right to recheck the criminal record status of an employee at any time during their employment with us.

1.6 Depending upon the post the employee may not be able to work unsupervised until clearance has been received from the DBS.

1.7 There are three levels of disclosure, Enhanced, Standard and Basic – see the Council’s Safeguarding Policy (section 2) for information about these.

1.8 The Council as an organisation using the DBS for Enhanced and Standard Disclosures complies with the Disclosure & Barring Service Code of Practice. Please see the *gov.uk* link to the Code: <https://www.gov.uk/government/publications/dbs-code-of-practice>

Where required, HR will provide the criminal record disclosure application forms to the individual for completion and subsequent forwarding (by HR) to the DBS.

1.9 The individual will need to agree to the disclosure being obtained. All criminal record disclosure application forms need to be counter signed by the Council. The Council’s lead signatory is the HR Manager, and an HR Officer is authorised as a counter signatory. Enhanced or Standard Disclosures are issued by the DBS only to the individuals that they relate to who are then required to present the original copy to the Council’s HR service.

1.10 When a new post is established the HR Manager should evaluate the need for disclosure and at what level. If a disclosure is required then the advertisement and recruitment documentation should state:

* That the successful applicant will be asked to apply for disclosure
* The level of disclosure required
* That further information about the DBS can be found at [www.gov.uk/government/organisations/disclosure-and-barring-service](http://www.gov.uk/government/organisations/disclosure-and-barring-service)

**Jobs subject to a criminal record disclosure**

2.1 As above, appointments to some jobs are made conditional on satisfactory Disclosure & Barring Service (DBS) clearance being received. Where Enhanced or Standard Disclosures are required this is because the postis in a job category that is exempt under the Rehabilitation of Offenders Act 1974 (as amended), allowing information on ‘spent’ convictions to be requested. The Council reserves the right where appropriate to seek disclosure for other positions at Basic level (this only discloses unspent convictions etc.).

2.2 Where a disclosure at Enhanced or Standard level is to form part of the recruitment process, we require applicants to provide full details of all disclosable spent and unspent convictions etc. with their job application form. This information should be emailed under separate, confidential cover to the HR Section ChichesterHR@chichester.gov.uk and we guarantee that this information is only seen by those who need to see it as part of the recruitment process. Certain spent convictions and cautions are 'protected' and are not subject to the above disclosure of spent convictions to employers. Please see the DBS website for guidance and criteria:

<https://www.gov.uk/government/news/disclosure-and-barring-service-filtering>).

2.3 Unless the nature of the position allows the Council to ask about the applicant’s wider criminal record, we only ask on the job application form about unspent convictions as defined by the Rehabilitation of Offenders Act.

2.4 When a criminal record is revealed for a shortlisted candidate a discussion will take place with the applicant at the interview or separately to this about the relevance of the offences to the post in question. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of a conditional offer of employment.

2.5 As with all other relevant employment related legislation staff responsible for recruitment and selection should have an understanding of the Rehabilitation of Offenders Act and what is meant by a ‘spent ‘conviction.

2.6 Below is a table showing examples of when sentences are spent. **However, to ensure the protection of the public, the changes do not apply to persons sentenced to more than 4 years imprisonment following a conviction for any serious violent, sexual or terrorist offences listed in Schedule 18 of the Sentencing Code** [**www.legislation.gov.uk/ukpga/2020/17/schedule/18/enacted**](http://www.legislation.gov.uk/ukpga/2020/17/schedule/18/enacted)

Rehabilitation periods are the period of the sentence plus a "buffer" period starting from the date the sentence ends.

For custodial sentences:

|  |  |
| --- | --- |
| **Sentence length** | **Revised rehabilitation periods introduced by the Police, Crime, Sentencing and Courts (PCSC) Act 2022 (sentence plus "buffer" period below)** |
| Custodial sentence of 1 year or less |  12 months |
|  |  |
| Custodial sentence of more than 1 year and up to 4 years | 4 years |
| Custodial sentence of more than 4 years |  7 years |

For non- custodial sentences:

|  |  |
| --- | --- |
| **Sentence** | **Buffer period (will apply from end of sentence)** |
| Community Order (& Youth Rehabilitation Order) |  Period of the order |
| Fine | 1 year (from date of conviction) |
| Absolute discharge | None |
| Conditional discharge, referral order, action plan order, supervision order, bind over order, hospital order | Period of the order |

**The above periods are halved for persons under 18 at the date of conviction**

## Assessing the RELEVANCE OF CRIMINAL RECORDS

3.1 The suitability of a person with a criminal record to do the job will vary depending upon the circumstances and the details of their conviction. The information that is likely to help assess the suitability of a person with a criminal record for a position is:

* The seriousness of the offences revealed
* Whether the applicant’s circumstances have changed since the offences took place making reoffending less likely.
* Whether the individual has a pattern of offending behaviour, has carried out a number of offences and whether those offences are similar.
* The length of time since the offence took place.
* The relevance of the offences to the nature of the job applied for, workplace environment, exposure to money, property and children/ adults at risk.
* The sentence given by the court to the offender.
* The extent of job supervision.

Official guidance from the Home Office and other government department (e.g. Health and Education).

3.2 Assessing the relevance of convictions cannot be taken in isolation – it should be done in relation to tasks within the post. It is important to balance the risk factors of the job against the risk of re-offending i.e. would the duties and responsibilities relating to the job create an opportunity for the individual to re-offend. If not the person would not be at risk.

## Fair Use of Information

4.1 For applicable posts, our recruitment information will indicate that a Disclosure will be required for the successful candidate. This will also state that a past conviction will not necessarily be a bar to obtaining a position.

4.2 Any matters arising from a Disclosure that will affect a recruitment decision should be discussed with the candidate prior to the decision being made.

4.3 Guidance concerning the employment of ex-offenders is available from the HR service and managers should seek advice before making recruitment decisions.

4.4 Information gained through a Disclosure will be held confidentially in line with the Data Protection Act 2018 and General Data Protection Regulation (GDPR) and the storage and disposal of this information should be in line with guidance issued by the Disclosure & Barring Service.

**CURRENT STAFF AND CRIMINAL CONVICTIONS**

5.1 An employee subject to police criminal investigations or charged with, or convicted of, a criminal offence will not automatically face disciplinary proceedings. However he / she may be subject to disciplinary action, including dismissal, where management believes the criminal matters being investigated or the conduct leading to the charge or conviction does affect the employee’s ability or suitability for continued employment or, if required for the role, it prevents satisfactory clearance by the DBS.

5.2 Any decision to instigate disciplinary proceedings will be based on a reasonable belief following a fair investigation into the circumstances of the case. Action will not necessarily be deferred because the outcome of the prosecution is not known.

5.3 In assessing any disciplinary action, the Council will take into account the nature of the offences in relation to the employee’s post including the possible reaction of other employees and users of Council services to the continued employment of the employee.

5.4 In some cases the nature of the alleged offence may not justify disciplinary action (e.g. off-duty conduct if it has no bearing on employment) but the employee may not be available for work because he or she is in custody or on remand. The Council retains the right to stop an employee’s salary for the period spent in custody. However each incident will be reviewed on its own merits. In these cases the Council will decide whether, in the light of the needs of the organisation, the employee’s job can be held open.

5.5 Where a criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job may be illegal or otherwise not possible (for example because a key contractual obligation can no longer be met), the Council will consider whether suitable alternative work is available prior to any termination of employment.

5.6 Where an employee, charged with or convicted of a criminal offence, does not cooperate with the Council’s disciplinary investigations and proceedings, this will not deter the Council from taking action. The employee will be advised in writing that unless further information is provided, a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

## Summary

The request and handling of criminal records should always be based on confidentiality and discretion. Applicants should be encouraged to be honest by stating that candidates will be considered on merit and ability. Enhanced and Standard Disclosures should never be sought for posts that are not exempt under the terms of the Rehabilitation of Offenders Act. The Council will always ensure that access to criminal record information is on a need-to-know basis.

#### Useful Contacts:

Disclosure & Barring Service: <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>

and information line: 0870 90 90 811

NACRO (National Association for the Care and Resettlement of Offenders): [www.nacro.org.uk](http://www.nacro.org.uk) and head office number: 0300 123 1999 or Email: helpline@nacro.org.uk

NACRO **support and training for organisations and employers:** tel: 0845 600 3194 Email: employeradvice@nacro.org.uk

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